

## II. REMARKS

### A. Status of the Claims

Claims 1-4 were originally filed with the case. All claims were rejected in the Office Action mailed December 11, 2008. Claim 1 was amended in the Response to Office Action filed on March 11, 2009. All claims have been rejected in the outstanding Office Action. Claim 1 is amended herein to clarify the subject matter of the claims. No claims are added or cancelled herein. Therefore, claims 1-4 remain pending.

### B. The Claims are Not Anticipated by Lang

The Action rejects claims 1-4 under §102(b) as being anticipated by Lang (US Patent No. 6,582,721). Lang is said to teach the use of a dietary supplement of cobeadlets, copper, vitamin C, vitamin E and Vitamin A in the form of beta-carotene, lutein and zeaxanthin, and mineral zinc. Applicants respectfully traverse.

The cobeadlets described in Lang contain one or more xanthophyll(s), one or more carotene(s)/retinoid(s), one or more antioxidant(s) and one or more solidifying agent(s). Lang further describes dietary supplements containing those co-beadlets. The dietary supplement of the present invention comprises cobeadlets containing Vitamin E and active carotenoid in the form of Vitamin A, lutein and/or zeaxanthin. The total amount of Vitamin E in the cobeadlets and in the dietary supplement of the present invention is from 0.5% to 25% by weight. The total amount of active carotenoid in the cobeadlets and in the dietary supplement of the present invention is approximately 10% to 30% by weight. These amounts of Vitamin E and carotenoid

include Vitamin E and carotenoid that is within the cobeadlets and that is in the dietary supplement, but not within the cobeadlets. The dietary supplement of the present invention further contains approximately 10% to 30% Vitamin C, approximately 0.03% to 0.3% copper, and approximately 0.2% to 4% zinc. The Vitamin C, copper and zinc are not contained with the cobeadlets used in the dietary supplements of the invention. The particular combinations and amounts of ingredients contained in the dietary supplements of the present invention are not described within Lang.

The Action asserts that Lang teaches concentrations of antioxidants at 2-10% and carotenoids at 10% and that use of the term "approximately" shows that the exact concentration of each component is not critical. As discussed above, Lang describes co-beadlets containing certain ingredients in specified amounts and dietary supplements containing those co-beadlets. Lang does not provide guidance with respect to total concentration of the ingredients, or which ingredients should be contained in the co-beadlets, which should be contained in the overall composition of the dietary supplement, and which may be present in both the co-beadlets and the overall composition of the dietary supplement, as is provided in the dietary supplements described in the present invention.

For a prior art reference to render a claim anticipated, that reference must set forth every element in the claim, either expressly or inherently. *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983)). In other words, to support a rejection under section 102, a reference must show *all* features of the rejected claim(s). *Minnesota Mining & Mfg. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1569, 24 USPQ2d 1321 (Fed.

Cir. 1992). The Federal Circuit has stated that "absence of a claim element from a prior art reference negates anticipation." *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 224 U.S.P.Q. 409 (Fed. Cir. 1984). Since Lang lacks a teaching of certain features of the present invention, it cannot be said to anticipate the claimed invention.

In light of the foregoing arguments, Applicant respectfully requests that the anticipation rejection based on Lang be withdrawn.

**C. Conclusion**

This is submitted to be a complete response to the outstanding Action. Based on the foregoing arguments, the claims are believed to be in condition for allowance; a notice of allowability is therefore respectfully requested.

The Examiner is invited to contact the undersigned attorney at (817) 551-4321 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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